**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**Appellate Side**

**L.P.A. No175 OF 2007**
**with**
**Civil Application No.301 of 2007**
**in**
**Writ Petition No.6274 of 2007**

The Pune District Central Coop Bank
Ltd, Pune having its head office
at 4-B, B J Road, Pune 411001 Appellant.

vs

1. Datta Vikas Karyakari Seva Sahakari
   Sanstha Maryadit, at and post
   Khadki, Tal Daund, Dist Pune
   through its chairman

2. The Collector of Pune
   having his office at Collector's
   Office, Pune.

3. The District Dy Registrar
   Coop Societies, Pune District
   having his office at Sakhar Sankul
   Shivaji Nagar, Pune 411005

4. The State of Maharashtra ..Respondents

with

**L.P.A. No176 OF 2007**

**with**
**Civil Application No.302 of 2007**

**in**
**Writ Petition No.6275 of 2007**

The Pune District Central Coop Bank
Ltd, Pune having its head office
at 4-B, B J Road, Pune 411001 Appellant.

Vs

1.Krishi Vikas Karyakari Seva Sahakari
Sanstha Maryadit, at and post
Galandwadi, Tal Daund, Dist Pune
through its chairman

2.The Collector of Pune
having his office at Collector's
Office, Pune.

3.The District Dy Registrar
Coop Societies, Pune District
having his office at Sakhar Sankul
Shivaji Nagar, Pune 411005

4. The State of Maharashtra ..Respondents

with

**L.P.A. No178 OF 2007**

**with**
**Civil Application No.307 of 2007**
**in**
**Writ Petition No.5780 of 2007**

The Pune District Central Coop Bank
Ltd, Pune having its head office

at 4-B, B J Road, Pune 411001 Appellant.

Vs

1.Raje Chatrapati Vikas Karyakari Seva Sahakari
Sanstha Maryadit, at and post
Nirvi, Tal Shirur, Dist Pune
through its chairman
Mr.Anil Balasaheb Wable

2 The Collector of Pune
having his office at Collector's
Office, Pune.

3 The District Dy Registrar
Coop Societies, Pune District
having his office at Sakhar Sankul
Shivaji Nagar, Pune 411005

4. The State of Maharashtra ..Respondents

with

**L.P.A. No179 OF 2007**

**with**
**Civil Application No.308 of 2007**
**in**
**Writ Petition No.6274 of 2007**

Nanasaheb Babanrao Dorge
adult, occ agriculturist
r/o Yavat, Tal Daund, Dist Pune Appellant.

Vs

1. Datta Vikas Karyakari Seva Sahakari
Sanstha Maryadit, at and post
Khadki, Tal Daund, Dist Pune

through its chairman.

2.The Pune District Central Coop Bank
Ltd, Pune having its head office
at 4-B, B J Road, Pune 411001

3.The Collector of Pune
having his office at Collector's
Office, Pune.

4. The District Dy Registrar
Coop Societies, Pune District
having his office at Sakhar Sankul
Shivaji Nagar, Pune 411005

5. The State of Maharashtra ..Respondents

Mr AV. Anturkar with Mr.S.S. Salunke for the appellants.
Mr S.A.Rajeshirke for appellant in LPA 179/07
Mr. S.P. Kadam for respondent No.1.
Mr. R.M. Patil AGP for respondent Nos. 2 to 4

**CORAM: SWATANTER KUMAR, C.J., &**
**DR. D.Y. CHANDRACHUD, J.**

**judgment reserved on: 10th Sept 2007**
**judgment delivered on: 11th Oct.2007**

JUDGMENT (PER SWATANTER KUMAR, C.J.):

Letters Patent Appeal Nos. 175, 176 and 179 of 2007 are directed against the order dated 28th August, 2007, passed by the

learned single Judge in Civil Writ Petition Nos. 6274 and 6275 of 2007 whereas Letters Patent Appeal No. 178 of 2007 is directed against the order dated 17th August, 2007, passed by the learned single Judge in Civil Writ Petition No. 5780 of 2007. It may also be noticed that Letters Patent Appeal No. 179 of 2007 has been filed by an applicant praying for similar reliefs in relation to the order dated 28th August, 2007, passed by the learned single Judge.

2. In all the above three writ petitions, Rule and interim reliefs were granted. Though the date of the interim orders granting stay of the order of the Collector are different but the grounds stated in all the orders are similar, based upon identical reasoning and as such it would be appropriate to dispose of these four Appeals by a common judgment.

3. In the above referred writ petitions, the petitioners had approached this Court under Article 226 of the Constitution of India praying that the orders dated 14th August, 2007 and 22nd August, 2007, passed by the Collector of Pune vide which the resolution passed by the Sansthas nominating one of its members to participate in the election to the Board of Directors of the Pune District Central Co-operative Bank Ltd. was rejected, be quashed and the name of the

nominated persons be included in the final voters' list for the election of the Board of Directors of the Bank to be held in September, 2007. Vide the impugned orders the learned single Judge granted stay to the above orders of the Collector and further directed the Bank to include the name of each of the Sansthas in the final voters list.

4. One Nanasaheb Babanrao Dorge was not a party in the writ petition but has filed LPA No. 179 of 2007 against the order dated 28th August, 2007 claiming himself to be an affected party. It is his case that the respondent-Sanstha, petitioners in Civil Writ Petition NO. 6274 of 2007, had filed an application before the Co-operative Court which was rejected by the court. In the Writ Petition before the learned single Judge, he was not granted opportunity to put forward his case, though he was ordered to be impleaded as a party. Neither in the cause title of the LPA nor in the copy of the writ petition annexed thereto, does his name reflect as a party respondent. The very locus of the appellant to file this appeal i.e. Letters Patent Appeal No. 179 of 2007 has been questioned by the respondents. Interim orders have also been prayed by way of Civil Applications. The said applications were heard along with the present LPAs.

5. As is apparent from the above noticed facts, the controversy in the present case lies in a narrow compass. The Court has to examine as to the interpretation of Section 27 of the Maharashtra Cooperative Societies,Act,1960, hereinafter referred to as the Act read with Rule 6 (5) of the Maharashtra Specified Cooperative Societies Election to Committees Rules,1974 as to when the period of three years would commence. The Appellant is the Federal society and the respondent, amongst others, are the members of the Federal Society. The Collector, vide his order dated 14th August, 2007 and other orders, had rejected the contention of the member societies that they should be ordered to be included in the list of voters and permitted to exercise their right to vote in the elections to the Board of Directors of the Appellant Society. These orders of the Collector were stayed by the learned single Judge vide orders dated 17th August, 2007 and 28th August, 2007. The reliance was placed by the respondent- Sansthas upon the judgment of the Supreme Court in the case of *Dudhganga Vikas Seva Sanstha Maryadit* vs. *District Collector, Kolhapur and others*, 2006 (5) Mh. L.J. 325. In the said case, the Supreme Court held as under.

> "4. The facts not in dispute are that the appellant Society is a primary society. It contributed to the capital of a federal society known as "Kolhapur District Central Co-operative Bank Ltd., respondent 2 herein on 30-12-2002. It is also not disputed before us that it became a member of the federal society with effect from that every

date. Election of the office-bearers of the federal society was done to be held in April, 2006, and a question arose as to whether the appellant society was eligible to be a voter. The controversy arose because the name of the appellant Society was not included in the provisional list of voters. The matter came up for decision before the District Collector who rejected the contention of the appellant Society and held that it was not eligible to vote. Aggrieved by the order of the District Collector, the appellant Society filed the instant writ petition before the High Court which has been dismissed by the impugned judgment and order.

5. The relevant part of Section 27 of the Act is as follows:

> "27. ***Voting powers of members:-*** (1) Save as otherwise provided in sub-sections (2) to (7), both inclusive, no member of any society shall have more than one vote in its affairs; and every right to vote shall be exercised personally, and not by proxy;
>
> Provided that in the case of an equality of votes the Chairman shall have casting vote.
>
> (2)... ... ...
>
> (3) A society, which has invested any part of its funds in the shares of any federal society, may appoint one of its members to vote on its behalf in the affairs of that federal society and accordingly such member shall have the right to vote on behalf of the Society:
>
> Provided that, any new member society of federal society shall be eligible to vote in the affairs of that federal society only after the completion of the period of three years from the date of its investing any part of its fund in the shares of such federal society:

(3-A) An individual member of a society shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrollment as a member of such society.

(4) - (11) ... ...

6. The federal society being a specified co-operative society, elections to the committees thereof are governed by the Rules. The relevant part of Rule 4 reads as follows:

4. *Provisional list of voters.-* (i) A provisional list of voters shall be prepared by every society for the year in which general election is due to be held. The persons who have completed minimum period of two years as members from the date of their enrollment before 30th June of the year immediately preceding the year in which such election is due shall be included in the provisional list. If different constituencies are provided in the bye-laws, the names of voters shall be arranged constituency wise as laid down in the bye-law:

Provided that, if in any case, the preparation of the provisional list of voters falls due after the expiry of a period of six months from the 30th June, the Collector may, in consultation with the Registrar in respect of the societies of the categories mentioned in clauses (i),(v), (vi) and (vii) of sub-section (1) of Section 73-G, and in consultation with the District Deputy Registrar in respect of the societies the other categories mentioned in sub-section (1) of Section 73-G , by order, change the date of the 30th June and subsequent dates and fix revised dates for the purposes of these rules."

7. A mere reading of section 27 makes it explicit that a society, which has invested any part of its fund in the shares of a federal society, may appoint one of its

members to vote on its behalf in the affairs of the federal society. Proviso to sub-section (3) of Section 27 of the Act lays down the condition of eligibility which is to the effect that any new member of a federal society shall be eligible to vote in the affairs of the federal society only after the completion of the *period of 3 years from the date of its investing* any part of its fund in the shares of such federal society. We may also note sub-section 3-A) of section 27 of the Act which relates to an individual member of a society . In his case it is provided that he shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrollment as a member of such society. The legislature has consciously employed in sub-sections (3) and (3-A) words which re of significance in the proviso to sub-section (3) the period of 3 years is reckoned from the date of the society investing any part of its fund in the share of a federal society, whereas sub-section (3-A) provides that the period of 2 years shall be computed from the date of enrollment of an individual as a member of such federal society.

8. Having regard to the plain words used in section 27(3) of the Act, the appellant society having invested its fund in the shares of Kolhapur District Central Cooperative Bank Ltd., respondent No.2 herein on 30.12.2002, it becomes eligible to vote in the affairs of the federal society after 30.12.2005. We are informed that the date of investment by the appellant society and its enrollment as a member of the federal society is the same, namely, 30.12.2002. Ex-facie therefore, in terms of section 27(3) of the Act, in April 2006 when the election was due to be held, the appellant society was entitled to appoint one of its members to vote on its behalf in the affairs of the federal society respondent no. 2, having completed the period of 3 years from the date of its investment in shares of respondent No. 2 society on 30.12.2002".

5. From the above dictum of the Supreme Court it is clear that

the period of three years has to be counted from the date of investment by the appellant society. In the case before the Supreme Court the period of three years was over on 30th December 2002, the date on which partial investment was made by the society, and thus the court held that the society in that case was eligible for voting as a member of the parent society. If the said principle is applied to the present case, the order of the learned Single Judge can hardly be interfered with. Furthermore, we must notice that the question in the present appeals has become academic in nature and substance. The respondent in Letters Patent Appeal No. 175 of 2007 being member society had deposited its fund with the appellant on 16th February 2004 and were kept on account. Of course, the application for membership was pending determination before the Apex Body. On 3rd March 2004 respondent No.1 was accepted as member and on 5th March 2004 membership was sanctioned in favour of the constituent society. For the purpose of casting vote, the relevant date would be 24th February 2004. In fact the said period of three years, even from March 2004, has already lapsed and there would be no purpose in declining the request of the respondent, even if for the sake or arguments the contentions raised on behalf of the appellants are accepted. There is no dispute on facts that the respondent-society in the respective LPA has been

accepted as member of the Apex Body and no prejudice of any kind has been caused to them by virtue of the orders of the learned single Judge.

6. The contention of the appellants is that the cut off date is 24th February 2004 as fixed by the Circular dated 11th May 2007 and respondent- societies were not eligible as they had not been enrolled as members prior to the cut off date. This contention is repelled on the strength of section 27(3) where it is clearly stated that the society which had invested its fund in shares of any federal society would be entitled to appoint its member to vote on its behalf, provided they had completed the period of 3 years from the date of investment or any part of the funds in shares of any such federal society. The distinguishing factor in this case is that the date of investment and the date of enrollment as member are different. Sections 3 and 3(a) would have to be read harmoniously and once a right has accrued under section 27(3) in terms of the judgment of the Supreme Court, it can hardly be frustrated by section 3(a). At a subsequent stage they were also made members i.e. on 3rd March 2004 on the strength of investment made by them on 16th April 2004. Even from this point of view, we do not see any reason to interfere with the order of the

learned single Judge and in any case these are interim orders and the writ petitions are still pending before the learned single Judge. The court would take final view on the subject at the time of final disposal of the petitions.

7. For the reasons aforestated we find no merit in these appeals, same are dismissed, leaving the parties to bear their own costs.

**CHIEF JUSTICE**

**DR.D.Y.CHANDRACHUD, J.**